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I. INTRODUCTION

In accordance with Rule 12.1 of the Commission's Rules of Practice and Procedure ("Rules"), the Commission's Consumer Protection and Enforcement Division ("CPED") and the Respondents, Mesa Crest Water Company ("Mesa Crest"), Timothy J. Flynn and F. Patrick Flynn (together "Respondents"), hereby jointly move the Commission to approve expeditiously their Settlement Agreement dated August 5, 2016 ("Settlement Agreement," Attachment 1 hereto), for the purpose of resolving all issues presented in the above-captioned investigation. This motion is submitted consistent with Rule 12.1, and pursuant to the Commission's Decision 16-06-057, which extended the statutory time for this proceeding. The Settlement Agreement is an all-party settlement, which, if approved, fully resolves this proceeding. CPED and Respondents anticipate no opposition to this joint motion. CPED and Respondents request that the Commission approve their Settlement Agreement because, as discussed more fully below, it is reasonable in light of the whole record, consistent with law, and in the public interest. (Rule 12.1(d).)

In addition, CPED and Respondents respectfully request that the Commission accord this joint motion expedited consideration and determination because prompt approval of the motion will facilitate the prompt sale of Mesa Crest. Under the Settlement Agreement, the sale of Mesa Crest is both an object and a precondition to final resolution of this proceeding. Under Rule 14.6(b), the "Commission may reduce or waive the period for public review and comment on proposed decisions and their alternates, where all the parties so stipulate. . . ." In addition, under Rule 14.6(c) where no hearings were conducted as well as where the matter is uncontested as here, the Commission may reduce or waive the public review and comment period on a decision that grants the relief requested. Therefore, if the

Commission's proposed decision on this motion approves and adopts the Settlement Agreement without material modification, CPED and the Respondents hereby request that the public review and comment period be waived.

II. PROCEDURAL BACKGROUND

Mesa Crest is a Class C water company, located in the Los Angeles County community of La Cañada Flintridge. On July 1, 2015, the Commission issued I.15-06-018 (filed June 25, 2015), an Order Instituting Investigation into the operations and practices of Mesa Crest "With Respect to a Series of Financial Transactions, and Possible Threats to the Health and Safety of its Ratepayers." (The "OII".) CPED and the Respondents are the only parties to this proceeding.

The OII named Mesa Crest, its sole shareholder, F. Patrick Flynn,¹ and its President, Timothy J. Flynn, as Respondents. The OII directed Respondents to show cause why the Commission should not petition the Los Angeles Superior Court to appoint a receiver for Mesa Crest. The Respondents filed their response on August 7, 2015, denying all allegations.

On September 22, 2015, following issuance of a Scoping Memo and schedule, Mesa Crest moved for an order holding the proceeding in abeyance and referring the matter to Alternative Dispute Resolution. The order requested by Mesa Crest was denied by the Assigned Administrative Law Judge ("ALJ"). However, a subsequent request by Mesa Crest for an extension of time to serve rebuttal testimony was granted, in part, on November 25, 2015 and rebuttal testimony was served on December 23, 2015.

¹ F. Patrick Flynn's shares of Mesa Crest are held in trust for him by the Flynn Bypass Trust UTA dated 08/06/91, as amended, of which he is the sole trustee and the sole beneficiary, *see* Settlement Agreement, pp. 1, 10.

On January 5, 2016, Mesa Crest submitted to the ALJ by email its “Motion to Continue Hearing and Set Status Conference to Facilitate Sale of Utility.” Following an all-party telephone status conference with the Assigned ALJ on January 6, 2016, the Assigned ALJ issued an email ruling cancelling the scheduled hearings and taking them off calendar, initiating procedures for Mesa Crest to inform CPED of potential sale offers received by the utility from qualified buyers, and providing for further status conferences. CPED and Mesa Crest then commenced settlement discussions, seeking to reach agreement for sale of the utility and a complete resolution of this proceeding.

On May 5, 2016, CPED and Respondents reached agreement in principle on most of the terms of a potential settlement among all parties, the details of which they commenced to document and negotiate. Thereafter, they notified the Assigned ALJ of the likelihood they would reach a complete settlement. On June 23, 2016, the Commission issued D.16-06-057, extending the statutory deadline for this proceeding to December 24, 2016 in order for the Commission “to review the provisions of the settlement agreement and to prepare a proposed decision for Commission consideration.” (D.16-06-057, p. 2.) On July 25, 2016, CPED and Respondents confirmed their consent to all terms of their settlement agreement and on August 5, 2016, the Respondents and CPED executed the Settlement Agreement attached hereto as Attachment 1.

Should the Commission approve the Settlement Agreement without material modification, Mesa Crest will attempt to negotiate, finalize and execute a sale agreement with the already-identified Class A, Commission-regulated buyer. (Attachment 1, p. 4.) The proposed sale will be presented to the Commission by Mesa Crest and the buyer in a separate application. (*Id.* at ¶ 2.c.) Upon Commission approval and the subsequent closing of the

sale, pursuant to the Settlement Agreement, CPED and the Respondents request the Commission dismiss the OII and close this proceeding. (*Id.*, p. 6 at ¶ 10.)

III. PROVISIONS OF THE SETTLEMENT AGREEMENT

Although no party admits or concedes any position taken in this proceeding (Attachment 1, pp. 3-4, ¶ 1 and p. 7, ¶ 13), the Settlement Agreement accomplishes two primary objectives that address CPED's concerns in this OII.

First, the Settlement Agreement obligates Respondents to sell Mesa Crest according to specific terms agreed to by CPED in the Settlement Agreement and subject to Commission approval. Those terms are:

- Sale of Mesa Crest to a Class A, Commission-regulated buyer, pursuant to the terms of a Letter of Intent executed on March 31, 2016 (*id.* at p. 4, ¶ 2), including -
 - Consistency with the Settlement Agreement
 - Consistency with law
 - Commission approval of the sale
 - CPED's being informed, on a confidential basis, of ongoing sale agreement negotiations and terms
 - "Replacement cost new less depreciation" study to be performed by an appraiser selected from a list provided by CPED, the results of which will both provide a cap for the purchase price and establish a rate base equal to the purchase price going forward
 - Capital improvement plan or schedule for such a plan to be submitted with the buyer and Mesa Crest's application for approval of the sale
- CPED and Mesa Crest's agreement to commence an auction process for the sale of Mesa Crest, if the negotiation and execution of an asset purchase agreement and the filing of an application for Commission approval of the contemplated sale to the already-identified buyer should not be accomplished by February 15, 2017 (*id.* at p. 5, ¶ 7), unless that date is extended for good cause by the parties and the Commission.

Second, the Settlement Agreement imposes significant one-time financial obligations on the Respondents, which will be carried out concurrently with the closing of the Commission-approved sale. Respondents' financial obligations are:

- Repayment by the Flynns of their debt to Mesa Crest in the total amount of \$384,000, which amount will be dedicated exclusively by the buyer to capital improvements that may be included in rate base if and when they become used and useful (*id.* at pp. 4-5, ¶ 3);
- Payment by Respondents of the sum of \$217,000 exclusively designated for capital improvements, which will not be included in rate base (*id.* at p. 5, ¶ 4) ;
- Waiver of recovery of Mesa Crest's purchased water balancing account in the approximate amount of \$53,000 (*id.* at p. 5, ¶ 5) ;
- Waiver by F. Patrick Flynn of the net outstanding balance of \$12,448.92 remaining on a loan from him to Mesa Crest (*id.* at p. 5, ¶ 5) ;
- Payment of \$105,000 to the State General Fund (*id.* at p. 5, ¶ 6) ; and
- Limitations on the scope and nature of buyer contracts for employment of Mesa Crest's officers during the transition period following sale (*id.* at p. 7, ¶ 14).

The Settlement Agreement incorporates standard provisions for release and waiver, warranty, choice of law and other terms of agreement:

- Forbearance (*id.* at p. 6, ¶ 9) ;
- Releases (*id.* at p. 6, ¶ 11) ;
- Release and Waiver (Civil Code § 1542) (*id.* at p. 6, ¶ 12) ;
- Warranties (*id.* at p. 7, ¶ 15) ;
- Construction of agreement (*id.* at pp. 7-8, ¶ 16) ;
- Execution in counterparts (*id.* at p. 8, ¶ 17) ;
- Rights and obligations inure to successors (*id.* at p. 8, ¶ 18) ;
- Authorization (*id.* at p. 8, ¶ 19) ;

- California law to govern (*id.* at p. 8, ¶ 20) ;
- Integration clause, entire agreement (*id.* at p. 8, ¶ 21) ;
- Severability, modification (*id.* at p. 8, ¶ 22) ; and
- Mediation, alternative dispute resolution (*id.* at p. 8, ¶ 23).

Finally, the Settlement Agreement is contingent upon the Commission’s approval (Attachment 1, p. 6, ¶ 8), and it is conditioned upon the dismissal of this OII without findings adverse to any Respondent upon the closing of the sale of Mesa Crest (*id.* at ¶ 10).

IV. **THE COMMISSION SHOULD APPROVE THE SETTLEMENT AGREEMENT**

Rule 12.1(d) of the Commission’s Rules of Practice and Procedure sets forth the standard for approval of settlements. It requires a settlement to be “reasonable in light of the whole record, consistent with law, and in the public interest” in order to receive Commission approval. The all-party Settlement Agreement reached by CPED and Respondents in this proceeding meets the criteria of Rule 12.1(d) because it conserves the resources of the Commission and the parties, and expeditiously and economically resolves the parties’ differences while providing for safe, reliable and uninterrupted service to ratepayers through the sale of substantially all of Mesa Crest’s assets to a qualified buyer – a Class A regulated public utility – through sale procedures approved by CPED, as well as providing for imposition of significant financial obligations on Respondents. The Settlement Agreement is a fair and just compromise of competing litigation positions that seeks to achieve the primary objectives of CPED, Respondents and the Commission.

A. The Settlement Agreement is Reasonable in Light of the Whole Record

The parties' Settlement Agreement conserves the resources of the Commission and the parties, by agreeing to resolve the parties' stark differences. In this proceeding, the positions taken by CPED and Respondents were diametrically opposed. (*See* Mar. 10, 2015 Final Staff Report of CPED; Aug. 7, 2015 Response to OII.) The Settlement Agreement acknowledges the parties' disagreements about CPED's allegations and requires Respondents to sell the utility. (Attachment 1, pp. 1-2, 3-4 at ¶¶ 1-2.) The Settlement Agreement also imposes significant financial obligations on the Respondents. (Attachment 1, pp. 4-5 at ¶¶ 3-6.) In consideration of Respondents' agreement to sell the utility and satisfy the significant financial obligations required by the Settlement Agreement, the parties agree that there will be no admission of liability, wrongdoing or violation by Respondents and no finding of liability, wrongdoing or violation from the Commission. (*Id.*, pp. 3-4 at ¶ 1; p. 6 at ¶ 10; p. 7 at ¶ 13.)

Upon closing of the sale of Mesa Crest, respondents F. Patrick Flynn and Timothy J. Flynn must repay funds the utility advanced to them with interest (Attachment 1, pp. 4-5), with their repayment allocated to capital improvements to be made by the buyer within the Mesa Crest service territory, and F. Patrick Flynn must forgive Mesa Crest's repayment of the remaining balance on a loan he made to Mesa Crest (*id.* at ¶¶ 3, 5). An additional payment must be made to the utility that is dedicated to future capital improvement expenditures. (*Id.* at ¶ 4.) Upon closing, a contribution must also be made to the State's General Fund. (*Id.* at ¶ 6.) In addition, Mesa Crest must agree not to pursue recovery in rates of funds accrued in its Purchased Water Balancing Account. (*Id.* at ¶ 5.) Together with the sale of the utility, these provisions of the settlement reasonably ensure that Mesa Crest's

ratepayers will continue to receive adequate water service from a stable utility well into the future.

Rather than requiring litigation of the parties' disagreements, potentially including a costly and burdensome receivership proceeding in state court, the parties have instead reached agreement for Respondents to make the foregoing payments upon the sale of substantially all of Mesa Crest's assets to an already-identified, Class A Commission-regulated buyer. (Attachment 1, pp. 3, 4.) The parties have agreed on procedures for the sale of Mesa Crest that are accepted by CPED. (*Id.* at p. 4, ¶ 2.) This will ensure ratepayer protection in the sale process and the future operation of the utility.

The Commission has frequently looked with favor upon settlements that resolve "potentially time-consuming and disruptive" disputes and avoid further litigation without requiring the parties to concede factual or legal contentions, and it has approved such settlements as fair and reasonable. (D.09-02-015, p. 4 (concluding that a settlement of violations alleged in I.08-07-012, without admission or concession, was reasonable, consistent with law, and in the public interest); *see also* D.09-08-007, pp. 4-5 (settlement of parties' "reasonable differences," as reflected in the record, provided sufficient information for the Commission to conclude the settlement was reasonable in light of the entire record).) Because the Settlement Agreement meets these standards, as supported by the record, all parties to this proceeding agree that the Commission should find it reasonable in light of the whole record.

B. The Settlement Agreement is Consistent with Law

The Settlement Agreement is consistent with law. For example, the Settlement Agreement ensures that the sale of Mesa Crest will proceed without interruption to service or

adverse impact to ratepayers. (Attachment 1, p. 4, ¶ 2.) The sale will be to a well-qualified, Commission-regulated Class-A buyer, subject to Commission approval. (*Ibid*; *id.*, pp. 4-5 at ¶ 3.) These provisions of the Settlement Agreement ensure that the sale will proceed in compliance with the Public Utilities Code mandate for Commission approval of any sale or transfer of utility assets. (Pub. Util. Code §§ 851, 854.) In addition, the Settlement Agreement’s valuation study and sale price provisions ensure that “just and reasonable” rate requirements will be met going forward. (Pub. Util. Code § 451.) Furthermore, the Settlement Agreement explicitly requires that the sale of Mesa Crest will proceed consistent with applicable law and prior Commission decisions. (Attachment 1, p. 4 at ¶ 2.b.) CPED and the Respondents do not believe that any provision of the Settlement Agreement contravenes the law or prior decisions of the Commission. For these reasons, the Settlement Agreement is consistent with law.

C. The Settlement Agreement is in the Public Interest

The Settlement Agreement provides for the safe, economical and expeditious sale of substantially all of Mesa Crest’s assets to an eminently qualified buyer through sale procedures that have been approved and accepted by CPED. (Attachment 1, pp.3, 4; *see also id.*, p. 5 at ¶ 7.) The sale price will be limited based on a study to be performed by an appraiser selected from a list of appraisers provided by CPED that will determine the “replacement cost new less depreciation” for Mesa Crest’s utility assets. (*Id.* at p. 4, ¶ 2.e.) The purchase price will not exceed the valuation determined in this study, and the sale agreement will establish a rate base equal to the purchase price, thereby ensuring that Mesa Crest’s buyer will carry forward the utility operation with a reasonable and accurate rate base in place, which is in the public interest. (*Ibid.*)

The Settlement Agreement also includes significant financial benefits for ratepayers, ensuring that substantial funds will be available to the buyer for use toward capital improvements in a manner favorable to Mesa Crest's customers. (Attachment 1, pp. 4-5, ¶¶ 3-5.) It also provides for the full repayment of the outstanding principal and interest of the funds advanced by the utility that are the subject of this investigation proceeding. (*Id.*, ¶ 3.) These ratepayer-protective provisions of the settlement serve the public interest by ensuring that the utility will continue to provide reliable service to its ratepayers.

For all of the foregoing reasons, the parties' Settlement Agreement is reasonable in light of the whole record, consistent with law and in the public interest. Therefore, the Settlement Agreement complies with Rule 12.1(d). The Settlement Agreement is unopposed. The Settlement Agreements avoids burdensome and protracted litigation while providing significant ratepayer benefits. Therefore, the Commission should promptly approve the Settlement Agreement.

D. The Settlement Agreement Meets the Commission's All-Party Settlement Criteria

In harmony with the standards of Rule 12.1(d), the Commission has set forth an alternative four-factor test for approval of all-party settlements. (D.09-07-018, pp. 6-7.) All-party settlements must have the support of all active parties, all active parties must fairly represent all affected interests, no term may contravene statutory provisions or prior Commission decisions, and the settlement documentation must provide the Commission with sufficient information to permit it to discharge its future regulatory obligations. (*Ibid.*) The Settlement Agreement here satisfies all four requirements.

First, as noted, the only parties before the Commission in this proceeding are CPED and the three Respondents, all of whom support the Settlement Agreement, as evidenced by this joint motion and the Settlement Agreement itself. (Attachment 1 at pp. 9-10.) Second, the interests in this proceeding are represented by the three Respondents, on the one hand, whereas the interests of ratepayers, the public and the Commission, in enforcing the Public Utilities Code and its own rules, policies, procedures and general orders, are represented by CPED on the other hand. Third, the Settlement Agreement explicitly requires the sale of Mesa Crest to proceed consistent with applicable law and Commission decisions (Attachment 1 at ¶ 2.b), and no provision of the Settlement Agreement contravenes the law or prior decisions of the Commission. Fourth, because the Settlement Agreement sets forth procedures for the sale of Mesa Crest to a Class A, Commission-regulated public utility buyer (Attachment 1 at pp. 3, 4 and ¶ 2) as well as Respondents' financial obligations upon the sale of Mesa Crest (*id.* at ¶¶ 3, 4, 5, 6), the Commission will have sufficient information to permit it to discharge its future regulatory obligations with regard to Mesa Crest and the buyer, for the protection of the ratepayers' interests.

Because all four requirements of the all-party settlement test are met, in addition to the three factors of Rule 12.1(d), the Commission should approve the Settlement Agreement, without modification.

V. REQUEST FOR EXPEDITED TREATMENT

Because the Commission's prompt approval of this joint motion will facilitate a prompt sale of Mesa Crest, which is both an object of and a precondition to final resolution of this proceeding under the terms of the Settlement Agreement, CPED and the Respondents request the Commission waive the public review and comment period so that this joint

motion may be resolved on an expedited basis. The “Commission may reduce or waive the period for public review and comment on proposed decisions and their alternates, where all the parties so stipulate,” as do the parties here. (Rule 14.6(b).) Where no hearings were conducted, as here, or where the matter is uncontested, as is also the case here, the Commission may reduce or waive the public review and comment period, provided that its decision grants the relief that is requested. (Rule 14.6(c).) Therefore, CPED and Respondents jointly request expedited treatment of their motion and, if the Commission’s proposed decision on this motion approves and adopts the Settlement Agreement without material modification, they also request that the public review and comment period be waived.

VI. REQUEST FOR RELIEF

WHEREFORE, the Consumer Protection and Enforcement Division and Mesa Crest Water Company, Timothy J. Flynn and F. Patrick Flynn respectfully move the Commission to approve and adopt the Settlement Agreement attached hereto as Attachment 1, without modification, and they request the Commission to waive the period for public review and comment on its proposed decision in this proceeding, pursuant to Rule 14.6(b) and 14.6(c). Upon Commission approval of the attached Settlement Agreement, Mesa Crest will proceed to execute a sale agreement and seek approval of the sale of Mesa Crest in a separate application as described above and in the Settlement Agreement. Upon Commission approval and closing of that sale, CPED and the Respondents ask the Commission to dismiss the OII and close this proceeding.

August 18, 2016

Respectfully submitted,

/s/ Jonathan Koltz

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